

BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B

FILED

IN RE: **DAVID FRANKLIN MOREHEAD**
Arkansas Bar ID # 89143
CPC Docket No. 2008-022

JUN 23 2008

LESLIE W. STEEN
CLERK

CONSENT FINDINGS & ORDER

The formal charges of misconduct upon which this Consent Order is premised, involving respondent attorney David F. Morehead of Pine Bluff, Jefferson County, Arkansas, arose from information brought to the attention of the Committee on Professional Conduct by Leroy Langley, Jr., of McGehee, Arkansas.

On October 10, 2005, Leroy Langley, Jr. employed David F. Morehead and paid him \$709.00 (\$209.00 for his case filing fee and \$500.00 as a legal fee) for Morehead to file a Chapter 7 bankruptcy petition for Langley. On October 15, 2005, Morehead filed his Petition, as No. 05-bk-27425, certifying to the Court that Langley needed to pay the \$209.00 filing fee in installments and that Langley had paid Morehead no funds by that date. His filing fee was due to be paid by the first date set for his meeting of creditors on November 17, 2005. Even though Morehead had Langley's funds with which to pay the full filing fee, the fee was not paid. On November 25, 2005, Langley's case was dismissed for failure to pay the filing fee. Morehead failed to communicate this crucial development to Langley.

Almost one year later, on September 20, 2006, Morehead filed a Motion to Reopen Case for Langley, and paid his filing fee of \$220.00 two days later. The Schedules Morehead refiled for Langley on October 8, 2006, appear to be the same Schedules filed by Morehead originally on October 15, 2005, and even recite again that Langley needed to pay the filing fee in installments.

Morehead's statement of compensation again misstated to the court that he had received no funds from the debtor, when Morehead had received \$709.00 from Langley on October 10, 2005. At a hearing on October 11, 2006, the court denied Morehead's motion to reopen Langley's case, on the basis that the clerk's records did not show the filing fee to have been paid by that date. If the fee had actually been paid on September 22, 2006, as the docket reflects, for some unexplained reason Morehead was not prepared at the hearing to show proof of payment and salvage his client's case. If the fee had been paid, Morehead could have easily demonstrated that fact to the court before the order denying his motion to reopen was actually issued on January 11, 2007.

No further action has been taken and Langley is still without relief from creditors who continue to pursue him. From late 2005 to late 2007, Morehead failed to provide Langley with crucial information about his bankruptcy matter, both when requested by him and as it came to Morehead.

This case, and others of Morehead's bankruptcy cases, came to the attention of the Office of Professional Conduct at various times in 2006. Morehead was contacted about certain cases. He responded by letter dated October 17, 2006, stating he had reviewed his files and found five parties who had paid him the filing fees in cases that were dismissed before the fees were paid and where the fee had not been refunded. Langley's file was among the five. Morehead stated each of the five clients desired that he file to reinstate their case. Langley's motion to reopen was denied in open court by Judge Mixon on October 11, 2006. Morehead's statement, as it regarded Langley's case, in Morehead's letter of October 17, 2006, to OPC, was therefore less than candid and accurate at the time.

Following Respondent Attorney's receipt of the formal complaint, the attorney entered

into discussion with the Executive Director which has resulted in an agreement to discipline by consent pursuant to Section 20.B of the Arkansas Supreme Court Procedures Regulating Professional Conduct of Attorneys at Law (2002). Upon consideration of the formal complaint and attached exhibits, admissions made by the respondent attorney, the terms of the written consent, the approval of Panel B of the Committee on Professional Conduct, and the Arkansas Rules of Professional Conduct, the Committee on Professional Conduct finds:

A. Mr. Morehead's conduct violated Rule 1.1 in that he failed to timely pay his client's bankruptcy filing fee in late 2005, even though the client had timely provided Morehead sufficient funds with which to pay it, causing the case to be dismissed on November 25, 2005, for failure to pay the fee. Morehead allowed his motion to reopen the case to be denied on October 11, 2006, because he failed to show proof to the judge that the filing fee had been paid on September 22, 2006. Arkansas Rule 1.1 requires that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. Mr. Morehead's conduct violated Rule 1.2(a) in that it was his client's objective in employing and paying Morehead in October 2005 that he timely pay the filing fee and obtain relief through bankruptcy court for Mr. Langley in a timely manner thereafter. Morehead failed to abide by this objective, although having the means to do so. Arkansas Rule 1.2 (a) requires that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c) and (d), and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

C. Mr. Morehead's conduct violated Rule 1.3 in that he failed to timely pay his client's

filing fee in the first filing, causing his client's case to be dismissed on November 25, 2005.

Without explanation, and while holding the client's funds to pay his filing fee, Morehead delayed from the dismissal on November 25, 2005, to September 20, 2006, in filing a motion to reopen Mr. Langley's case. Arkansas Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

D. Mr. Morehead's conduct violated Rule 1.4(a)(3) in that in spite of the client's requests for status information about his bankruptcy case, Morehead failed to provide such information to his client. Arkansas Rule 1.4(a)(3) requires that a lawyer shall keep the client reasonably informed about the status of the matter.

E. Mr. Morehead's conduct violated Rule 3.3(a) in that he falsely reported to the Court in his initial Langley petition filed October 15, 2005, that his client, Leroy Langley, Jr., needed time to pay his bankruptcy filing fee when, in fact, he had paid Morehead the full filing fee on October 10, 2005, before he filed the first Petition. In the "Disclosure of Compensation of Attorney for Debtor" Morehead filed on October 15, 2005, he stated to the Court he had received "\$0.00" in payments from his client, Mr. Langley, prior to filing the Statement, a false statement, as Langley had paid Morehead a total of \$709.00 on October 10, 2005. Arkansas Rule 3.3(a) requires that a lawyer shall not knowingly make a false statement of fact or law to a tribunal.

F. Mr. Morehead's conduct violated Rule 8.4(d) in that his failure to properly follow-through has twice caused Mr. Langley's Chapter 7 bankruptcy case to be dismissed, leaving him with no legal relief from dischargeable debts. Arkansas Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, in accordance with the consent to discipline presented by David F. Morehead and the Executive Director, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct that Respondent **DAVID FRANKLIN MOREHEAD**, Arkansas Bar No. 89143, be, and hereby is, **REPRIMANDED** for his conduct in this matter, ordered to pay \$500.00 restitution for the benefit of Leroy Langley, Jr., and pay \$50.00 Committee costs. The \$550.00 in restitution and costs assessed herein shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By Valerie L. Kelly
Valerie L. Kelly, Chairperson, Panel B

Date 6/20/08